TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1919

No. [redacted]

THOMAS J. EVANS, SOLE SURVIVING RECEIVER OF THE CITIZENS & SCREVEN COUNTY BANK, PETITIONER,

vs.

NATIONAL BANK OF SAVANNAH.

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA.

PETITION FOR CERTIORARI FILED MARCH 11, 1918.
CERTIORARI AND RETURN FILED MAY 4, 1918.

(26,383)

(26,383)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 916.

THOMAS J. EVANS, SOLE SURVIVING RECEIVER OF THE CITIZENS & SCREVEN COUNTY BANK, PETITIONER,

vs.

NATIONAL BANK OF SAVANNAH.

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 13, 1918.

1 Office Supreme Court U. S. Filed Mar. 11, 1918. James D. Maher, Clerk.

S. F. COOPER and T. J. EVANS, as Receivers of the Citizens & Screven County Bank, Pl'tiffs in Error,

v.

THE NATIONAL BANK OF SAVANNAH, Defendant in Error.

From the Superior Court of Chatham County, Georgia, March Term, A. D. 1917.

Bill of Exceptions.

Be it remembered, that on the 24th day of March, A. D. 1917, before the Honorable Peter W. Meldrim, Judge of the Eastern Judicial Circuit, at Savannah, Georgia, there came on to be heard, the case of S. F. Cooper and T. J. Evans, as receivers of the Citizens & Screven County Bank, against the National Bank of Savannah, said hearing being upon the demurrer filed by the defendant to the plaintiff's petition. And after argument had upon the said demurrer of the said defendant, the said court, on the 27th day of March A. D. 1917, rendered judgment sustaining the said demurrer, and dismissing the said plaintiff's petition.

To which said judgment and ruling of the court the plaintiffs then and there excepted, now except and assign the said ruling and judgment of the court as error, and say that the said court erred in sustaining the said demurrer and in dismissing the said plaintiff's petition, on each and every ground of the said demurrer.

The plaintiffs as such receivers specify the following
2 *pro*tions of the record in said case as material to a clear understanding of the errors in this bill of exceptions, to wit:

1. The original petition of the plaintiffs filed November 1st A. D. 1916. And the amendment thereto filed March 10th, 1917, and allowed on March 24th, A. D. 1917.

2. The demurrer of the defendant filed Jan. 6th, A. D. 1917, as amended by demurrer filed March 24th, A. D. 1917.

3. The judgment and ruling of the court sustaining the said demurrer as amended, and dismissing the plaintiff's case.

And now within the time provided by law, and within thirty days of the entry of judgment sustaining the said demurrer and dismissing plaintiffs' petition, comes the said plaintiffs as receivers of the Citizens & Screven County Bank, and tenders this bill of exceptions and prays that the same may be certified as provided by law in order that the errors complained of may be considered and corrected by the Court of Appeals of the State of Georgia.

SAUSSY & SAUSSY,
Counsel for Plaintiffs in Error.

Post Office Address: Savannah, Ga.

1—916

3 *Certificate.*

I do certify that the foregoing bill of exceptions is true, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Chatham county, Georgia, is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the present term of the Court of Appeals of the State of Georgia, that the errors alleged to have been committed may be considered and corrected. This 27 day of March A. D. 1917.

P. W. MELDRIM,
Judge Eastern Jud. Cir. of Georgia.

STATE OF GEORGIA,
Chatham County:

Clerk's Office Superior Court.

I, J. Edward Way, Deputy Clerk of the Superior Court of Chatham County, Georgia, the same being a court of record, do hereby certify the annexed and foregoing pages in type-writing and writing to be the true original bill of exceptions filed in this office in the case of S. F. Cooper and T. J. Evans, receivers of the Citizens & Screven County Bank, plaintiff in error, versus The National Bank of
4 Savannah, defendant in error, a copy of which bill of exceptions remains on file in this office.

In testimony whereof I have hereunto set my official signature and affixed the seal of the superior court at the city of Savannah, County and State aforesaid, upon this 30th day of March, in the year of our Lord one thousand nine hundred and seventeen (1917).

J. EDWARD WAY,
Deputy Clerk Superior Court,
[SEAL.] *Chatham County, Ga.*

Due service of within bill of exceptions acknowledged, copy received within time required by law. This 27 day of March A. D. 1917.

EDWARD S. ELLIOTT,
GARRARD & GAZAN,
Counsel for National Bank of Savannah, Def't in Error.

Filed in office clerk of superior court, Chatham county, Georgia, this 27 day of March, 1917. Jos. J. Carr, Dep. Clerk. S. C. C. C. Ga.

[Endorsed:] Case No. 8690. Court of Appeals of Georgia. March Term 1917. Cooper et al., receivers, versus National Bank of Savannah. Bill of Exceptions. Filed in office Mar. 31, 1917. W. E. Talley, D. C. C. A. Ga.

5 STATE OF GEORGIA,
Chatham County:

To the Superior Court of said County:

The petition of S. F. Cooper and T. J. Evans, as receivers of the Citizens & Screven County Bank, a corporation respectfully shows:

First. That on the 22nd day of November A. D. 1915, Honorable Clifford Walker, as Attorney General of the State of Georgia, instituted proceedings against the Citizens & Screven County Bank, a corporation engaged in the banking business created under the laws of Georgia, in the superior court of Screven County, Georgia, for the purpose of winding up the affairs of the said bank, for receivership, and for other purposes mentioned in said proceedings, and thereafter in the said proceedings, your petitioners were duly appointed as receivers of the said Citizens & Screven County Bank by the said superior court, and were and are now receivers thereof, and are duly authorized by order of said court, to institute this present proceeding, as such receivers.

Second. That the National Bank of Savannah, is a national bank created under and pursuant to the laws of Congress of the
6 United States, and is a resident of and conducts its business in Chatham County, Georgia, and is a citizen of the State of Georgia, with its principal office and place of business in the said county of Chatham in said State.

Third. Your petitioner shows that commencing on the 2nd day of November A. D. 1914, and ending to wit, on the 18th day of October A. D. 1915, the said Citizens & Screven County Bank on numerous occasions borrowed money from the said National Bank of Savannah, and paid the said National Bank of Savannah and the said National Bank of Savannah knowingly received, charged and took from said Citizens & Screven County Bank, interest in excess of the highest contractual rate allowed under the laws of the State of Georgia, a list of the amount of loans made, the date when made and the amount of and time when interest charged, reserved and received by the said defendant was paid by the plaintiff, and the amount of interest in excess of the legal rate or contractual rate allowed by law by reason of the facts set forth in this paragraph of said petition, appears under Exhibit "A" attached hereto, made part of this petition, reference to the same being hereby made, the said defendant
7 discounting those of the said loans so specified in said exhibit at a rate of interest per annum in excess of the highest contractual rate, to wit, eight per cent per annum, taking out, charging and receiving the said interest in advance and passing to the credit of the said borrower the difference between the amount of the said loan, and the amount of the said discount, and in all of the loans set forth in said exhibit and at the time of each of said loans the said defendant knowingly took, received, reserved and charged the said Citizens & Screven County Bank a rate of interest greater than is allowed by law. All of said loans having been made and being payable at the city of Savannah, Chatham County, Georgia.

In addition, your petitioner further shows that the said defendant

bank further knowingly took, received, reserved and charged the said Citizens & Screven County Bank and said last named bank paid to said defendant, a rate of interest greater than is allowed by law, and that in addition to the foregoing facts, as a condition to making of any of the said loans or discounts it was understood and agreed at the time of making of all of said loans between said borrower and lender, that the said Citizens & Screven County Bank should at all times while it was a borrower keep on
8 deposit with the said National Bank of Savannah at least the sum of Ten Thousand Seven Hundred and Nine dollars and thirty-one cents ($10,709.31) which could only be used towards the payment of said indebtedness, and from the 2nd day of November 1914 to the 17th day of November 1915, such deposit was continuously and uninterruptedly maintained by said borrower under such requirement with said defendant, all of which was knowingly done for the purpose of exacting usury from the said borrower, the use of said ten thousand seven hundred and nine dollars and thirty-one cents ($10,709.31) to the Citizens & Screven County Bank, which was denied to it, being worth at least a rate of interest of seven per cent per annum, or the sum of one thousand four hundred and ninety-nine dollars and thirty cents ($1,499.30) for said period of time, and was equally worth to said defendant at least seven per cent per annum during said period of time.

Fourth. Your petitioner shows that by the said illegal and wrongful acts and practice of the said defendant, the said defendant has incurred a penalty of double the amount of all of the interest charged by it in the said usurious loans, and that the total amount of
9 such interest so reserved, charged and taken by the defendant and paid by the plaintiff is the sum of eighty-eight hundred and thirty-seven dollars and fifty-two cents, and by virtue of the order of the superior court of Screven County, Georgia, it has become the duty of your petitioners as such receivers of said borrower to sue for the said penalty of double the amount of said interest or the total sum of seventeen thousand and six hundred and seventy-five dollars and four cents, in which amount the said defendant is liable to your petitioners as such receivers.

Wherefore your petitioner prays judgment against the said National Bank of Savannah for double the amount of the said interest charged and received by it, to wit, the sum of seventeen thousand six hundred and seventy-five dollars and four cents, with interest from the date of the filingof this petition, and the plaintiff herein specially sets up and asserts its right to such recovery under the Acts of Congress in such cases made and provided.

And further your petitioner prays that process may issue directed to the said National Bank of Savannah requiring it to be and appear at the next term of this honorable court to answer your petitioner in the premises.

And your petitioner will ever pray, etc.

SAUSSY & SAUSSY,
Att'ys for Petitioners.

10 EXHIBIT "A."

Loans in Which More Than 8% per Annum in Advance Was Charged, Reserved and Paid.

Date.	Maturity.	Amount.	Interest charged in advance and deducted.	Int. at 8% on amt. actually loaned.	Excess over highest contractual rate.
March 15, 1915..	90 days.	85.000	109.73	95.80	13.93
April 19, 1915..	90 days.	75.000	1,545.20	1,469.09	76.11
July 19, 1915..	90 days.	63,925.84	1,318.90	1,252.13	66.77
Nov. 14, 1914..	90 days.	15.000	295.86	294.08	.78
Nov. 23, 1914..	90 days.	1.500	30.24	29.39	.85
June 8, 1915..	124 days.	5.000	138.90	133.96	4.94
June 14, 1915..	90 days.	5.000	101.15	97.97	3.18
July 12, 1915..	90 days.	5.000	101.11	97.94	3.13
Nov. 2, 1914..	90 days.	18.000	359.01	352.81	6.20
Nov. 2, 1914..	90 days.	5.000	99.73	98.00	1.73
Nov. 9, 1914..	90 days.	5.000	98.62	98.02	.60
Nov. 10, 1914..	90 days.	10.000	197.26	196.05	1.21
Oct. 18, 1915..	30 days.	63,972.49	478.86	423.29	55.57
May 13, 1915..	60 days.	5.000	66.67	65.77	.90
Nov. 28, 1914..	90 days.	5.000	98.62	98.03	.59
Jan. 16, 1915..	90 days.	75.000	1,479.45	1,470.81	8.64
Dec. 7, 1914..	90 days.	4.000	78.90	78.42	.48
Nov. 28, 1914..	90 days.	5.000	98.62	98.03	.59
Nov. 30, 1914..	90 days.	1.500	29.92	29.40	.52
Dec. 7, 1914..	90 days.	4.000	78.90	78.42	.38
Dec. 9, 1914..	90 days.	2.000	39.45	39.21	.24
Jan. 4, 1915..	90 days.	10.000	197.26	196.15	1.11
Nov. 14, 1914..	90 days.	15.000	295.86	295.08	1.78
			7,338.22		

11 STATE OF GEORGIA,
Chatham County:

To the Sheriff of the County of Chatham or his Deputy, Greeting:

S. F. COOPER and T. J. EVANS, as Receivers of Citizens & Screven County Bank,

versus

THE NATIONAL BANK OF SAVANNAH.

The defendant, the National Bank of Savannah, a corporation of said county of Chatham, and State of Georgia, created under the laws of Congress, is hereby required, personally or by its attorney, to be and appear at the next superior court of Chatham County, on the first Monday that being the 4th day of December 1916, next, then and there to answer the plaintiff on the merits of the foregoing petition; as in default of such appearance the said court will proceed as to justice shall appertain.

Witness, the Honorable Walter G. Charlton, judge of said superior court, this 1st day of November, in the year of our Lord, one thousand, nine hundred and sixteen (1916).

SAUSSY & SAUSSY,
Plaintiff's Attorney.

[SEAL OF COURT.] JOS. J. CARR,
Clerk S. C. C. C.

12 SHERIFF'S OFFICE, CHATHAM COUNTY,
SAVANNAH, GA., Nov. 2, 1916.

I have this day served a copy of the within named original petition and process upon the within named defendant institution, The National Bank of Savannah, Ga. by giving the same to Jacob S. Collins, President of said institution in person.

The return of

R. W. WESTCOTT,
Dep. Sheriff, Chatham Co.

Original petition and process filed in office Nov. 1st, 1916.

JOS. J. CARR,
Dep. Clerk S. C. C. C., Ga.

13 In the Superior Court of Chatham County, Georgia, March Term, 1917.

S. F. COOPER & T. J. EVANS, Receivers of Citizens & Screven County Bank,

vs.

NATIONAL BANK OF SAVANNAH.

And now comes the said plaintiff and with the leave of the court first obtained amends the third paragraph of the petition and the exhibit attached to said petition as follows:

By adding at the end of paragraph number three, at the end of the first paragraph thereof, on page two of said petition the following:

"At the time each of the said respective notes were made by the said Citizens & Screven County Bank to the defendant, as set forth in the said exhibit "A" attached to the original petition, the said defendant charged a discount against the said respective loans, of the amount set forth in the column of said exhibit marked and headed "Interest charged in advance and deducted," and only passed to the credit of the said Citizens & Screven County Bank the difference between the amount of such discount and the amount called for by the said notes, and the said discount so charged against the said Citizens & Screven County Bank, was paid by said Citizens & Screven

14 County Bank to the said defendant on the maturities respectively of the said notes, and the said discount deducted in ad-

vance and paid at maturity constituted the payment of usurious interest to the said defendant, and the said defendant knowingly accepted, demanded and received from the said Citizens & Screven County Bank at the said respective maturities of the said notes, usury, in that interest was charged, reserved and taken by the defendant and was in fact paid by the Citizens & Screven County Bank to said defendant, the said payments of said usury having been made at the times of the maturities respectively of the said notes.

Second. By amending Exhibit "A" attached to the original petition, by adding at the top of the column marked "Interest charged in advance and deducted," and after the word "deducted" the following: "and which amounts were paid at maturity of each loan by Citizens & Screven County Bank to National Bank of Savannah."

Third. By amending the fourth paragraph of said petition by adding after the word "loans" at the end of the fourth line of said fourth paragraph, the following:

"Paid by the said Citizens & Screven County Bank to the defendant as shown in Exhibit "A" under the heading "Interest charged in advance and deducted" and which amounts were paid at maturity of each loan by the Citizens & Screven County Bank to the National Bank of Savannah," and by amending the said fourth paragraph of said petition in the seventh line thereof by striking the amount therein set forth and inserting the amount of $7,338.22 in lieu thereof, and by amending the said fourth paragraph of said petition in the 12th line thereof by striking the amount therein incorporated and inserting in lieu thereof the amount of "$14,676.44."

Fourth. By amending the fourth line of prayer of said petition by striking the amount therein set forth and insert in lieu thereof the sum of "$14,676.44."

SAUSSY & SAUSSY,
Counsel for Plaintiffs.

Amendment allowed in open court this 24 day of March 1917.

P. W. MELDRIM,
Judge E. J. C. of Ga.

Filed in office March 10, 1917. Jos. J. Carr, Dep. Clerk S. C. C. C., Ga.

16 In the Superior Court of Chatham County, Georgia, December Term, 1916.

S. F. Cooper and T. J. Evans, Receivers of the Citizens & Screven County Bank,

vs.

The National Bank of Savannah.

And now comes The National Bank of Savannah and demurs to the petition in the above entitled cause and for grounds of demurrer shows:

1. That the said petition is not good and sufficient in law and sets forth no legal cause of action.

2. That the said petition is a petition to recover double interest by reason of usury charged and that usury is not set forth with sufficient particularity and there is no allegation in said petition of the payment of usurious interest.

3. That said petition is insufficient in law in that said petition undertakes to charge usury by merely setting up date of loan, maturity of loan, that is, number of days to maturity, amount of loan, interest charged in advance and deducted, interest at 8 per cent on the amount actually loaned, and the alleged excess over the highest contractual rate and that said alleged statement of usury is insufficient in that there is no inhibition under the
17 laws of the United States against charging interest in advance by way of discount at the highest rate allowed by the law of State. The statute in such case reading as follows:

"Any association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, territory, or district, where the bank is located and no more," so that usury under the laws of the United States is not to be figured on the amount actually loaned, but on the face of the note, bill of exchange, or other evidence of debt, which is discounted. The said law of the United States allows such an association to charge interest at the rate allowed by the laws of the State on the amount of the note, there being no inhibition in said statute of the United States against charging interest in advance at the rate of 8 per cent per annum, being the highest rate allowed by the State of Georgia, so that the alleged schedule of usury is defective, in that it does not calculate interest on the face of the note, but interest on the amount alleged to be actually loaned.

4. That the allegation in the 3rd paragraph of the said
18 petition that the said defendant discounted the loans specified in said exhibit at a rate of interest per annum in excess of the highest contractual rate, to wit, 8 per cent per annum, taking out, receiving and charging the said interest in advance and passing to the credit of said borrower the difference between the amount of said loan and the amount of said discount and in all of the loans

set forth in said exhibit and at the time of each of said loans the said defendant knowingly took, received, and charged the said Citizens & Screven County Bank a rate of interest greater than is allowed by law is incorrect and insufficient in that the exhibit referred to does not show whether or not the amount charged is in excess of 8 per cent per annum in advance on the face of the note; the amount on which usury is to be charged is on the face of the note and not on the amount actually loaned; in other words, under the statute of the United States a discount of 8 per cent in advance for the time of the loan deducted from the loan so that the borrower receives only the face of the note less 8 per cent interest in advance for the time of the loan does not constitute usury and is not unlawful under the statute of the United States in such cases
19 made and provided, to wit, Revised Statutes of the United States, Section 5197.

5. That the second portion of the third paragraph of said petition is vague, indefinite, and insufficient and does not of itself or as construed with the rest of the petition constitute usury under the laws of the United States.

6. That the allegations in the 3rd paragraph of the petition that the Citizens & Screven County Bank paid to the National Bank of Savannah interest in excess of the highest contractual rate are mere conclusions of the pleader in that the allegations of said paragraph show that such alleged payments were mere discounts, by which the said National Bank took out the amount of said interest and passed to the credit of the Citizens & Screven County Bank the difference between the amount of the loan and the amount of the discount thereon and such discount is not payment of interest within the intent and meaning of the laws of the United States.

7. That the 4th paragraph of said petition is vague, indefinite and insufficient in that it does not allege that the Citizens & Screven County Bank ever paid the defendant the usury alleged, as
20 the allegation that the total amount of such interest was reserved, charged, and taken by the defendant and paid by the plaintiff is a mere conclusion of the pleader in that the deduction of a discount in advance from a note is not payment of interest as contemplated by the laws of the United States in that behalf made and provided.

8. That the said 4th paragraph of the said petition is vague, indefinite, and insufficient, in that it assumes, as a conclusion of the pleader, that the Citizens & Screven County Bank has paid interest at 7 per cent on the alleged deposit of $10,709.31, referred to in the 3rd paragraph of said petition, and there is no allegation of the time when such interest was paid, or of the fact that it was paid.

9. That the allegations in the 4th paragraph of said petition that this defendant is liable to the petitioners for double the interest paid is a mere conclusion of the pleader without any evidence to base it on, there being no proper allegation of the payment of any interest or when it was paid.

Wherefore, this defendant prays that the said petition be dismissed and that this defendant do not further answer.

21 GARRARD & GAZAN,
EDWARD S. ELLIOTT,
Attorneys for The National Bank of Savannah.

Filed in office Jan. 6th, 1917. J. Edward Way, Dep. Clerk, S. C. C. C. Ga.

22 In the Superior Court of Chatham County, Georgia, March Term, 1917.

S. F. Cooper and T. J. Evans, Receivers of the Citizens & Screven County Bank,

vs.

The National Bank of Savannah.

And now comes The National Bank of Savannah and demurs to the petition in the above entitled cause as amended and for grounds of demurrer shows:

1. That the said petition is not good and sufficient in law and sets forth no legal cause of action.

2. That the said petition is a petition to recover double interest by reason of usury charged and that usury is not set forth with sufficient particularity and there is no allegation in said petition of the payment of usurious interest.

3. That said petition is insufficient in law in that said petition undertakes to charge usury by merely setting up date of loan, maturity of loan, that is, number of days to maturity, amount of loan, interest charged in advance and deducted, interest at 8 per cent on the amount actually loaned, and the alleged excess over the highest contractual rate and that said alleged statement of usury is in-

23 sufficient in that there is no inhibition under the laws of the United States against charging interest in advance by way of discount at the highest rate allowed by the law of State. The statute in such case reading as follows:

"Any association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, territory, or district where the bank is located and no more," so that usury under the laws of the United States is not to be figured on the amount actually loaned, but on the face of the note, bill of exchange, or other evidence of debt, which is discounted. The said laws of the United States allows such an association to charge interest at the rate allowed by the laws of the State on the amount of the note, there being no inhibition in said statute of the United States against charging interest in advance at the rate of 8% per annum, being the highest rate allowed by the State of Georgia, so that the alleged schedule of usury is defective, in that it does not calculate in-

terest on the face of the note, but interest on the amount alleged to be actually loaned.

4. That the allegation in the 3rd paragraph of the said
24 petition that the said defendant discounted the loans specified in said exhibit at a rate of interest per annum in excess of the highest contractual rate, to wit, 8 per cent per annum, taking out, receiving, and charging the said interest in advance and passing to the credit of said borrower the difference between the amount of said loan and the amount of said discount and in all of the loans set forth in said exhibit and at the time of each of said loans, the said defendant knowingly took, received, and charged the said Citizens & Screven County Bank a rate of interest greater than is allowed by law is incorrect and insufficient in that the exhibit referred to does not show whether or not the amount charged is in excess of 8 per cent per annum in advance on the face of the note; the amount on which usury is to be charged is on the face of the note and not on the amount actually loaned; in other words, under the statute of the United States a discount of 8 per cent in advance for the time of the loan deducted from the loan so that the borrower receives only the face of the note less 8 per cent interest in advance for the time of the loan does not constitute usury and is not unlawful under the statute of the United States in such cases made and provided, to wit, Revised
25 Statutes of the United States, Section 5197.

5. That the allegations made in the end of the first paragraph of paragraph number three as added by amendment are incorrect and insufficient in that under section 5197 of the Revised Statutes of the United States charging a discount against loans and charging interest in advance and deducting it and only passing to the credit of the borrower the difference between the amount of such discount and the amount called for by such note at the highest rate allowed by the laws of the State of Georgia is not usurious and the schedule referred to in said paragraph as Exhibit A does not show usury paid on the respective amounts set out in that the interest charged and reserved is not under the laws of the United States charged and reserved on the amount of the loan after deducting the discount, but on the amount of the loan before deducting the discount, such payments therefore are not usurious and the allegations that the defendant knowingly accepted, demanded and received from the said Citizens & Screven County Bank, at the respective maturities of the said notes, usury in that interest was charged, reserved and taken by the defendant and was in
26 fact paid by the Citizens & & Screven County Bank to said defendant, the payment of said usury having been made at the time of the maturities of the respective said notes, are incorrect in that such allegations are made on payments of interest charged on the amount of loan after deducting the interest instead of calculating interest on the amount of loans before deducting discount.

6. That the second portion of the third paragraph of said petition is vague, indefinite, and insufficient and does not of itself or as construed with the rest of the petition constitute usury under the laws of the United States.

7. That the allegations of the 4th paragraph of said petition as

amended are insufficient in that it appears by the allegations of the said fourth paragraph that the petitioners are claiming a recovery of penalty of double the amount of interest alleged to have been paid and it does not appear by the said petition that usury has been charged, received, or reserved by the defendant or paid by Citizens & Screven County Bank in that the charges and payments which are alleged to be usurious, are calculated on the amount of respective notes after deducting the amount charged by the defendant as interest or
27 discount when under the laws of the United States as set forth under Section 5197 of the Revised Statutes, discount should be calculated on the face of the note and not on the amount of the note after deducting such discount the National Bank of Savannah under said Section of the Revised Statutes of the United States being entitled to charge the highest rate of interest allowed by the laws of the State of Georgia, to wit, 8 per cent per annum, and to take same out in advance on the face of the note for the time such note is to run.

Wherefore, this defendant prays that the said petition be dismissed and that this defendant do not further answer.

GARRARD & GAZAN,
EDWARD S. ELLIOTT,
Attorneys for The National Bank of Savannah.

Filed in office M'ch 24th, 1917. William L. Grayson, Clerk S. C. C. C., Ga.

28 In Chatham Superior Court, March Term, 1917.

S. F. COOPER and T. J. EVANS, as Receivers of the Citizens and Screven County Bank,

vs.

THE NATIONAL BANK OF SAVANNAH.

Demurrer.

It appears that the Citizens and Screven County Bank borrower at different times certain sums of money from the defendant, the whole amount borrowed being $403,902.33, and the sum of the interest reserved by the defendant as discount at the rate of eight per cent per annum was $7,338.22. This action is brought by the receivers of the Citizens and Screven County Bank for $14,676.44, being double the sum so reserved as discount, and is founded on Section 5198 of the United States Revised Statutes.

Were this action against a person other than a National Bank, I should have no hesitation in holding under the case of M'Curry vs. Hartwell Bank, 236 Federal, 556, and cases therein cited, that the right of action was well founded; but the Act of Congress did not adopt the State law on the question of usury further than it relates to the rate of interest allowed by the laws of the States. By the

law of this State, Code Sec. 3436, a rate of interest greater
29 than eight per cent cannot be reserved by discount. The rate eight per cent per annum is adopted by the Congress. See Revised Statutes, Sec. 5197. The rate is one thing, the act of reserving is another and a different thing. A national bank may reserve interest at the rate allowed by the laws of the State, and such interest may be taken in advance. The rate allowed by this State is eight per cent per annum. The defendant, a National Bank, reserved interest at that rate and no more. Hence, the defendant is not guilty of violating Revised Statutes, Sec. 5198, and the demurrer must be and is sustained. In open court this March 26, 1917.

PETER W. MELDRIM,
Judge Eastern Judicial Circuit of Ga.

Filed in office March 27, 1917. William L. Grayson, Clerk S. C. C. C. Ga.

STATE OF GEORGIA,
Chatham County:

Clerk's Office Superior Court.

I, J. Edward Way, Deputy Clerk of the Superior Court of Chatham County, Georgia, the same being a court of record, do hereby certify the annexed and foregoing sixteen (16) pages in typewriting to be true and correct copies of such parts of
30 the original record on file in this office as are specified in the bill of exceptions as necessary to be transmitted to the Court of Appeals of the State of Georgia, in the case of S. F. Cooper and T. J. Evans, as receivers of the Citizens & Screven County Bank, plaintiff in error, versus The National Bank of Savannah, defendant in error.

In testimony whereof I have hereunto set my official signature and affixed the seal of the superior court, at the City of Savannah, county and State aforesaid, upon this 30th day of March, in the year of our Lord one thousand nine hundred and seventeen (1917).

J. EDWARD WAY,
[SEAL.] *Deputy Clerk Superior Court Chatham County, Ga.*

[Endorsed:] Case No. 8690. Court of Appeals of Georgia. March Term 1917. Cooper et al., receivers, versus National Bank of Savannah. Transcript of Record. Filed in office Mar. 31, 1917. W. E. Talley, D. C. C. A. Ga.

31 Court of Appeals of Georgia.

8690.

COOPER et al., Receivers,

v.

NATIONAL BANK OF SAVANNAH.

By the COURT:

1. The provisions of the acts of Congress constitute the ultimate authority relative to the operation of national banks, and the decisions of the Supreme Court of the United States will be followed by the State courts in the construction of those statutes.

2. The national-bank laws of Congress adopted as the authorized rate of interest that permitted by the laws of the several States where such banks might be located; but Congress did not adopt the prohibition imposed by the Georgia statute upon the taking of interest at the highest authorized rate in advance by way of discount, but on the contrary, by section 5197 of the Revised Statutes, specifically authorizes national banks to reserve, on any discount made, interest at the rate allowed by the laws of the several states.

3. In order to maintain a suit under section 5198 of the Revised Statutes of the United States, for the recovery of the penalty there imposed for the charging of usury which has been actually paid, such actual payment must be alleged and shown.

32 This suit was brought by the receivers of the Citizens & Screven County Bank against the National Bank of Savannah, alleging in substance that the National Bank had knowingly received, charged, and taken from the Citizens & Screven County Bank interest in excess of the highest contractual rate allowed under the laws of the State of Georgia; and it was sought to recover the penalty for usury imposed by the Federal statute upon national banks. An exhibit was attached to the petition, showing a list of the loans made, and in each instance were set forth the date, the time the loan was to run, the interest charged, the highest interest charge allowable by law, and the amount actually charged in excess thereof. Usury was alleged to have been received on each of these loans, in that interest was reserved in advance by way of discount at the highest rate allowed by law. The amount of such alleged usury was arrived at by taking the amount actually received under each loan and calculating eight per cent interest thereon for the time it was to run, and all interest reserved in excess of such amount was alleged to be usury. It was shown that each of the loans so made, including the alleged usurious interest embraced in each, had been paid at its re-

33 spective maturity. It was further alleged that the defendant bank further knowingly took, received, reserved, and charged the Citizens & Screven County Bank, and the last-named bank paid to the defendant, a rate of interest greater than is allowed by law,

in that it was understood and agreed between the borrower and the lender, at the time of the making of all of said loans, that the Citizens & Screven County Bank should, at all times while it was a borrower, keep on deposit with the National Bank of Savannah at least the sum of $10,709.31, which could only be used towards the payment of said indebtedness, and from the 2d day of November, 1914, to the 17th day of November, 1915, such deposit was continuously and uninterruptedly maintained by the borrower under such requirement with the defendant, all of which was knowingly done for the purpose of exacting usury from the borrower, the use of the $10,709.31, to the Citizens & Screven County Bank, which was denied to it, being worth at least a rate of interest of seven per cent per annum, or $1,499.30 for said period of time, and was equally worth to the defendant at least seven per cent per annum during said period. An amendment to the petition was filed, striking the amount originally claimed to be the total amount of interest taken as being the sum of
34 $8,837.52, and substituting in lieu thereof the sum of $7,338.-22, and substituting double the latter amount instead of twice the former as the amount of the penalty sued for. The reason of this amendment is thus explained in the brief of counsel for plaintiff in error: "The original petition sought to recover the amount of interest charged to the defendant in the petition on the deposit of $10,709.31. This was amended and stricken, because the interest on that amount, while lost to the plaintiff, was not paid to the defendant. In other words, the plaintiff cannot recover under the statute for interest lost, but for usury paid; and while the requirement of the deposit, on the conditions named, was really in itself a usurious transaction, the plaintiff could not recover the penalty computed on that amount." A demurrer to the petition as amended was filed, and was sustained; to which ruling exception is taken.

JENKINS, *J.* (After stating the foregoing facts:)

1. The Revised Statutes of the United States bearing upon the question here involved are as follows: Section 5197. "Any association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of
35 debt, interest at the rate allowed by the laws of the State, Territory, or district where the bank is located, and no more, except that where by the laws of any State a different rate is limited for banks of issue organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this Title. When no rate is fixed by the laws of the State, or Territory, or district, the bank may take, receive, reserve, or charge a rate not exceeding seven per centum, and such interest may be taken in advance, reckoning the days from which the note, bill, or other evidence of debt has to run. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight-drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest." Section 5198. "The taking, receiving, reserving, or charging a rate of inter-

est greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the rate of interest has been paid,
35 the person by whom it has been paid, or his legal representative, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same—provided such action is commenced within two years from the time the usurious transaction occurred." Section 5136 (7). "To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this Title." (U. S. Comp. Stat. 1916, §§9758, 9759, 9761.) The Georgia statute defines usury as "the reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest." Civil Code (1910), §3427. The Code (§3436) further declares: "It shall not be lawful for any person, company, or corporation to reserve, charge, or take for any loan or advance of money, or for-
37 bearance to enforce the collection of any sum of money, any rate of interest greater than 8 per centum per annum, either directly or indirectly by way of commission for advances, discount, exchange, or by any contract or contrivance or device whatever." In the case of the Loganville Banking Co. v. Forrester, 143 Ga. 302 (84 S. E. 961, L. R. A. 1915 D. 1195), the Supreme Court of this State held that "The reserving of interest in advance by a bank at the highest legal rate of interest on a loan, whether it be a short or long-term loan, is usurious." We might formulate and state the contentions of the plaintiff as follows: For a national bank to receive on any loan or discount more than the rate of interest allowed by the law of the State where it is located is a usurious transaction; in Georgia eight per cent. interest in advance by way of discount is by the State law usurious; therefore for a national bank in Georgia to receive eight per cent. in advance by way of discount is usurious. The contention of plaintiff is sustained by the authority of the case of Timberlake, v. First National Bank, decided by the Circuit Court, N. D. Mississippi, 43 Fed. Rep. 231 (3), where it was held: "Under Code Miss. 1880, which only allows interest on the amount of money actually lent, a national bank in that State can not deduct
38 interest in advance." The ruling made in the Loganville Banking Co. case is based upon the provisions of the Georgia statute against usury, which "expressly forbids an increase of the maximum interest rate by way of discount," and in that case it is stated that "All laws respecting the rate of interest charged for the loan of money by individuals are applicable to banks", citing Civil Code (1910), §2336. Therefore, the question with which we are

now concerned is whether, under the authority of the national-bank act as interpreted by the Federal decisions, a national bank can charge the highest rate allowed under the State law by way of discount in advance, although State banks are prohibited from so doing. Counsel for the defendant contend that they may, for the reason that while the State law specifically prohibits State banks over which it has control from thus exceeding the maximum rate by way of discount (which prohibition constitutes the basis of the decision in the Loganville Banking Co. case), the national-bank act (§§5197, 5136 (7), supra), on the contrary, expressly allows and permits national banks to charge the highest rate allowed under the State law by way of discount, the meaning of such authorized power to discount necessarily being to take out and reserve such
39 interest in advance. The acts of Congress providing for the creation and operation of national banks, as construed by the Federal courts, constitute the ultimate and paramount authority on the subject. Hansford v. National Bank of Tifton, 10 Ga. App. 270, 73 S. E. 405; Farmers National Bank v. Dearing, 91 U. S. 29, 23 L. ed. 196; Bates v. First National Bank of Dalton, 111 Ga. 757, 36 S. E. 949; First National Bank of Dalton v. McEntire, 112 Ga. 232, 37 S. E. 381; Reese v. Colquitt National Bank, 12 Ga. App. 472, 77 S. E. 320. In Haseltine v. Bank, 183 U. S. 134, 22 Sup. Ct. 51, 46 L. Ed. 118, the Supreme Court of the United States has said: "The definition of usury, and the penalties fixed thereto, must be determined by the National Banking Act, and not by the laws of the State." Thus, the act of Congress relating to the operation of national banks might have authorized them to charge a rate of interest in excess of that allowed under the State law; it might have restricted the power to discount under that rate to the right existing under the laws of the State where located; or it might have conferred such power to discount under the authorized State rate, irrespective of any such authority under the State law. It was within the scope of the authority of Congress to prescribe as the penalty for
40 usury upon national banks that which is provided under the law of the several States; or it might, as was in fact done, provide a separate and exclusive penalty, which in fact happens to be double in amount and in severity to that imposed under the law of this State. It was the opinion of the eminent trial judge who sustained the demurrer in the present case, that the act of Congress did not adopt the State law upon the question of usury further than it relates to the rate of interest allowed by the laws of the States. In this opinion we agree. It does not appear that the Federal statute prohibits, as does the Georgia law, the discount of paper at the highest contractual rate; but on the contrary it seems to specifically authorize any national bank to "reserve * * * on any * * * discount made, * * * interest at the rate allowed by the laws of the State * * * where the bank is located." (Revised Statutes, §6197, supra). It will also be observed that, under the language of the seventh paragraph of section 5136, R. S. U. S., defining the powers of a national bank, discounting is specifically included.

That the import of the word "discount" necessarily carries with it the charging of interest in advance is shown by what was said by the Supreme Court of the United States in the case of Fleckner v. Bank of United States, 21 U. S. (8 Wheat.) 338, 351, 5 L. ed. 631,
41 where Judge Story, speaking for the court says: "Nothing can be clearer than that by the language of the commercial world, and the settled practice of banks, a discount by a bank means, ex vi termini, a deduction or drawback made upon its advances or loans of money, upon negotiable paper, or other evidences of debt, payable at a future day, which are transferred to the bank." See also the recent case of McCarthy v. First National Bank, 223 U. S. 493, 499, 32 Sup. Ct. 240, 56 L. Ed. 523. A distinction has sometimes been held to exist between a direct loan and a purchase and discount of commercial paper, but in the case of Morris v. Third National Bank, 142 Fed. 25, 31, 73 C. C. A. 211, it was held by the Circuit Court of Appeals that no such distinction can be made; and it is there said that "the discounting of promissory notes and other evidence of debt is within the express granted powers of national banks." Rev. Stat. U. S. §5136. And the court further holds that that term is sufficiently comprehensive to include the acquisition both by way of purchase and by ordinary loan; quoting National Bank v. Johnson, 104 U. S. 271, 26 L. ed. 742, in which latter case it was said that "the terms, loans and discounts, are synonymous."

The Fleckner decision also holds that the taking of interest
42 in advance in the ordinary course of business does not constitute usury. Thus the court says (21 U. S. 354) that an authority to discount or make discounts, from the very force of the terms, necessarily includes an authority to take interest in advance. "And this is not only a settled opinion among professional and commercial men, but stands approved by the soundest principles of legal construction. Indeed, we do not know in what other sense the word discount is to be interpreted. Even in England, where no statute authorizes bankers to make discounts, it has been solemnly adjudged that the taking of interest in advance by bankers, upon loans in the ordinary course of business, is not usurious." The Fleckner case has been followed in many decisions rendered by the various judicatories of the country, State and Federal; and it must be regarded as well established that in the absence of any statute to the contrary, similar to that of force in this State, interest may be taken in advance by way of discount, at least on short-time paper, at the highest rate allowed by law. See Bank of Newport v. Cook, 60 Ark. 288, as reported in 29 L. R. A. 761, with note (30 S. W. 35, 46 Am. St. R. 171). Thus, while in the able opinion of our Supreme Court, as rendered by Presiding Justice Evans, it was held as the law
43 of this State, and, as we think, manifestly correctly, that under the Georgia statute, discount taken at the highest rate is prohibited as being usurious, the ruling made in that case would not apply to the powers of a national bank operating under Federal law which does not thus prohibit the taking of such discount, but on the contrary, expressly authorizes same, which practice, as thus authorized, has been declared by the Supreme Court of the United

States not to be usurious. It is true that the Fleckner decision was rendered long prior to the enactment of the present national-bank act; but the point is that this act as now of force authorizes discount at the highest rate allowed under the laws of the several States, and the ruling in the Fleckner case holds that such a practice is not usurious. As regards the operation of national banks within the State of Georgia, Congress adopted the rate of interest as here prescribed, but went no further, and not only did not adopt our inhibition upon discounting at that rate, but, on the contrary, gave specific authority therefor, which practice, in the absence of any such inhibition, has been held by the Supreme Court of the United States not to be usurious.

2. The gist of section 6198 of the U. S. Revised Statutes is to provide that the charging of usury by a national bank shall
44 cause a forfeiture of the entire interest; and that where such illegal interest shall have been actually paid, the bank shall forfeit twice that amount. Thus, the mere charging or stipulating for a usurious rate of interest, which has not been actually paid, causes a forfeiture of any interest in an action on the debt brought by the bank, while the actual payment of usury to a national bank renders it subject to an action maintained against it for twice the amount of the entire interest paid. The questions, therefore, relating to the second ground of complaint as set forth by the petition in the court below, are: 1st. Did the requirement that the borrowing bank should at all times during the period covered by the different loans keep and maintain on deposit with defendant a sum amounting to not less than $10,709.31, "which could only be used towards the payment of said indebtedness," render the transaction usurious? And 2d. If so, could such consummated requirement be treated as such a usurious transaction as would not only prevent the recovery of all interest in an action for the debt brought by the lender, but one which could be taken as such an actual payment of illegal interest as would authorize an independent suit maintained by the borrower to recover the pre-
45 scribed penalty of twice the amount of all interest actually paid? Counsel for the defendant bank contend that under the pleadings the sum required to be left with defendant did not exist as a general deposit, such as would have passed the title thereto to defendant and created the relation of debtor and creditor between it and the plaintiff, but that the fund constituted a special deposit, or rather a "deposit for a specific purpose," which had to be held by the bank for that particular purpose only, and which the defendant bank could not have otherwise used. They say that if the plaintiff bank lost the use of its money while so held, such result was occasioned solely by its own failure to apply it in payment of the indebtedness, "which meant, of course, the principal of the indebtedness." Deposits for specified purposes has been thus defined in 7 C. J. 631: "A deposit may be for a specific purpose, as where money or property is delivered to the bank for some particular designated purpose, as a note for collection, money to pay a particular note or draft, etc. While such a deposit is sometimes termed a

'special deposit' and partakes of the nature of a special deposit to the extent that title remains in the depositor and does not pass to the bank, yet it seems more accurate to look on this as a distinct class of deposit. In using deposits made for the purpose of
46 having them applied to a particular purpose, the bank acts as the agent of the depositor; and if it should fail to apply it at all, or should misapply it, it can be recovered as a trust deposit; and the agency created by the deposit is revocable by the depositor at any time before the purpose of the deposit has been accomplished." It thus appears that the proper meaning of such a deposit is that in making same a trust fund is constituted, with respect to which a special duty as to its application is assumed by the bank. And it has been held in Mayer v. Chattahoochee National Bank, 51 Ga. 325, that where such a deposit is made with specific direction that it shall be paid out to a check in favor of a named party which has been or will be given, the fund still remains the property of the depositor until the bank either pays or promises to pay same to the person for whose benefit the deposit was made. But in the present case, can the enforced deposit be properly regarded either as special or for a specific purpose merely for the reason that the plaintiff might have applied same towards the extinguishment of the debt? The main outstanding feature of its existence lies in the fact that it was enforced. It might be implied from the language of the petition that the lender could at any time,
47 and before the maturity of the loan, withdraw the deposit for the sole purpose of applying it on the indebtedness; but such implied privilege could not be taken as changing the maturity of the loan notes, and so such use of the deposit would merely constitute a prepayment, and as such would not relieve the maker of the notes from the payment of interest as provided for therein. It is true that upon the voluntary prepayment of a note, the exacting of the full specified legal interest which would have accrued up to its maturity does not constitute usury (Savannah Savings Bank v. Logan, 99 Ga. 291, 25 S. E. 692); but where such prepayment is not voluntary, but is compelled by reason of the fact that an enforced deposit in the amount of the payment is the necessary alternative, then, under either horn of the dilemma, either such payment or such deposit would constitute usury. In the search for usury, it is not the matter of form, but of substance which is essential. Pope v. Marshall, 78 Ga. 635, 4 S. E. 116; Rushing v. Worsham, 102 Ga. 825, 829, 30 S. E. 541. Thus, if the requirement of the lender that the borrower should maintain such a deposit was in fact merely a scheme or device by which the usurious intent could be concealed, then the transaction would be illegal, whatever its form. In 29 Am. & Eng. Enc. Law (2d ed.), 509 (2), the
48 following rule is stated: "In the case of loans or discounts by a bank at the highest legal rate of interest, a provision that the proceeds of the loan or discount or any part thereof shall be kept as a deposit in the bank during the period or a portion of the period of the loan renders the transaction usurious, for the reason that the borrower thus pays interest on money which he

does not receive or have the use of. But the fact that the borrower voluntarily allows a part of the loan to remain on deposit with the banker, without any agreement therefor, will not constitute the giving or taking of usury, though such deposit is made with the expectation by the borrower that he will thereby be enabled to obtain further loans more readily." In the case of East River Bank v. Hoyt, 32 N. Y. 119, it was held: "An arrangement by which one seeking a discount at a bank is required to obtain a discount of paper amounting to $1,500, to secure the application to his use of $1,000 of the proceeds, without the right to use the remainder thereof except in payment of the paper discounted when it shall become due, renders the transaction usurious and void." Turning now to our second inquiry, and treating the transactions between the parties to the present suit as being in fact thus infected
49 with usury, was there such a payment of illegal interest by reason of such enforced deposit as would authorize a suit to recover the penalty of twice the amount of all interest actually paid? Bearing in mind that we are now dealing with the transaction as regards the alleged payment of usury solely upon the basis of the allegations made relative to the enforced deposit, we find the rule in regard to the sufficiency of the payment of usury stated as follows, in 39 Cyc. 1091 (2), "The payment of usurious interest necessary to entitle the debtor to recover the statutory penalty must be an actual payment in money or money's worth. Nothing less will suffice. A renewal or other substituted obligation given by the original debtor is not a sufficient payment." In Lomax v. First National Bank (Tex. Civ. App.), 39 S. W. 655, it is held that in an action by a national bank on a note, a cross-action for the statutory penalty against the bank for taking usurious interest can not be maintained where the plea of usury fails to give the amount of usurious interest paid. Referring to the petition in the present suit as amended, we find no allegation setting forth the amount of usury paid by plaintiff to defendant by reason of such required deposit. On the contrary, the original averment setting forth the amount of such usurious payment has been
50 stricken by plaintiff, for the reason, as stated in the brief of its counsel, that "The interest on that amount, while lost to the plaintiff, was not paid to the defendant. In other words, the plaintiff can not recover, under the statute, for interest lost, but for usury paid; and while the requirement of the deposit, on the conditions named, was really in itself a usurious transaction, the plaintiff could not recover the penalty computed on that amount.' Thus, while the very able and learned counsel for plaintiff contend that the transactions embraced in the present suit are tainted with usury by reason of the enforced deposit, still, they themselves do not allege or contend that such an executed requirement constitutes an actual payment of usury by the plaintiff to the defendant; and under the provisions of section 5198 of the Federal statutes, an averment to that effect is a necessary requirement to the maintenance of a suit to recover the penalty there imposed for the charging of illegal interest which has been actually paid. See generally,

Citizens' National Bank of Danville v. Gentry, 111 Ky. 206, 63 S. W. 454, as reported in 56 L. R. A. 673, to which an exhaustive note is appended.

Judgment affirmed.

Wade, C. J., concurs.

Luke, J., dissents.

51 Court of Appeals of the State of Georgia.

ATLANTA, December 11, 1917.

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered: S. F. Cooper et al., receivers, v. National Bank of Savannah. This case came before this court upon a writ of error from the superior court of Chatham county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

Wade and Jenkins, JJ., concur. Luke, J., dissents.

Bill of Costs, $10.00.

52 In the Court of Appeals of Georgia, October Term, A. D. 1917.

S. F. COOPER and T. J. EVANS, as Receivers of the Citizens & Screven County Bank, Plaintiffs in Error,

v.

THE NATIONAL BANK OF SAVANNAH.

To the Honorable the Clerk of the Court of Appeals of the State of Georgia:

S. F. Cooper and T. J. Evans, as receivers of the Citizens & Screven County Bank, in the above entitled cause, herewith and within ten days after the filing of the judgment in the above court in the above cause give notice of their intention to apply to the Supreme Court of Georgia for a writ of certiorari, to review and correct the rulings of the said Court of Appeals in the above entitled cause.

S. F. COOPER AND
T. J. EVANS,
As Receivers of the Citizens & Screven County Bank, Plaintiff in Error.

By Their Counsel of Record, SAUSSY & SAUSSY.

P. O. Address, Savannah, Ga.

Case No. 8690. Court of Appeals of Georgia. Filed in office Dec. 14, 1917. Logan Bleckley, C. C. A., Ga.

53 Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, December 26, 1917.

Case No. 738.

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day an application to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of S. F. Cooper et al., receivers, v. National Bank of Savannah.

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

Case No. 8690. Court of Appeals of Georgia. Notice of Application for Certiorari. Filed in office Dec. 26, 1917. W. E. Talley, Deputy Clerk Court of Appeals of Georgia.

54 Supreme Court of Georgia.

ATLANTA, January 18, 1918.

The Honorable Supreme Court met pursuant to adjournment. The following order was passed: S. F. Cooper et al., receivers, v. National Bank of Savannah.

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied.

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, January 18, 1918.

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court affixed the day and year last above written.

Z. D. HARRISON, *Clerk.*

Case No. 8690. Court of Appeals of Georgia. Filed in office January 18, 1918. Logan Bleckley, C. C. A., Ga.

55 Court of Appeals of the State of Georgia.

CLERK'S OFFICE, ATLANTA, March 8, 1918.

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the entire record in the case therein stated, as appears from the records and files of this office.

Witness my signature and the seal of said court hereto affixed, the day and year above written.

[Seal Court of Appeals of the State of Georgia, 1906.]

LOGAN BLECKLEY,
Clerk Court of Appeals of Georgia.

(38806)

56 In the Supreme Court of the United States, October Term, 1917.

No. 916.

THOMAS J. EVANS, Sole Receiver of the Citizens & Screven County Bank, Petitioner,

v.

THE NATIONAL BANK OF SAVANNAH, Respondent.

It is stipulated and agreed between counsel for the petitioner and counsel for the respondent, that the following errors and omissions exist in the record of said cause of file in this court and that the same are hereby corrected:

On the third line of page Four after the words "allowed by law", should be inserted:

"And that in addition to the foregoing facts, as a condition to making of any of the said loans or discounts",

Also, that the word "in", the last word on said line three, and the word "that" on the beginning of line four on said page four be omitted therefrom.

On page five the note described as dated October 18th, 1915, for 30 days, should be $53,972.49, instead of $53,000.49.

On page 5, in the column headed "Interest charged in advance and deducted", in the fifth line thereof, the figures "$36.24" should be changed to "$30.24".

On page five, the figures $339,926.33, at the foot of column headed "Amount", should be entirely stricken.

On page 21, on the seventh line, the word "agreement", should be changed to "arrangement".

And on Page 21, on the tenth line from the bottom, the word "account", should be changed to "amount".

It is further stipulated that these changes and omissions may be made by the Clerk of the Supreme Court of the United States, in order to make the said printed record conform to the true record in the said cause.

Done the 30th day of April, A. D. 1918.

FREDERICK T. SAUSSY,
Counsel for Petitioner.
WM. GARRARD,
E. S. ELLIOTT,
Counsel for Respondent.

57 [Endorsed:] 916 26383. Supreme Court of U. S. October Term 1917. No. 916. Evans, as Receiver of Citizens & Screven County Bank, Petitioner, v. The National Bank of Savannah, Respondent. Stipulation of Counsel correcting parts of the record. Saussy & Saussy, Attorneys and Counsellors at Law, Office and P. O. Address Savannah, Georgia.

57½ [Endorsed:] File No. 26,383. Supreme Court U. S. October term, 1917. Term No. 916. Thomas J. Evans, as Receiver, etc., Petitioner, vs. National Bank of Savannah. Stipulation to correct transcript of record. Filed May 4th, 1918.

58 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the State of Georgia, Greeting:

Being informed that there is now pending before you a suit in which S. F. Cooper and Thomas J. Evans, Receivers of the Citizens & Screven County Bank, are plaintiffs in error, and National Bank of Savannah is defendant in error, No. 8690, which suit was removed into the said Court of Appeals by virtue of a writ of error to the Superior Court of Chatham County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Appeals and removed into the Supreme Court of the United States,

59 Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the nineteenth day of April, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,
Clerk of the Supreme Court
of the United States.

Filed in office April 24, 1918.
LOGAN BLECKLEY,
Clerk Court of Appeals of Georgia.

[Endorsed:] File No. 24,383. Supreme Court of the United States, No. 916, October Term, 1917. Thomas J. Evans, Sole Surviving Receiver, etc., vs. National Bank of Savannah. Writ of Certiorari.

60 In the Supreme Court of the United States, October Term, 1917.

Case No. 916.

THOMAS J. EVANS, Receiver of the Citizens & Screven County Bank, Petitioner,

v.

THE NATIONAL BANK OF SAVANNAH, Respondent.

The writ of certiorari in the above cause having been granted to the above entitled petitioner to review the judgment and decision of the Court of Appeals of Georgia in the above case, in which S. F. Cooper and T. J. Evans as receivers of the Citizens & Screven County Bank were plaintiffs in error and the National Bank of Savannah, the defendant in error;

Now it is therefore stipulated and agreed between counsel for the above named petitioner and counsel for the above named respondent,

that the transcript of the record of the said Court of Appeals of Georgia in said cause, now of file in the Supreme Court of the United States, be taken as a return to the said writ, and that the Clerk of the Court of Appeals of Georgia forward a certified copy of this stipulation to the Clerk of the Supreme Court of the United States, forthwith, as his return to the said writ of certiorari.

Done the 30th day of April A. D., 1918.

FREDERICK T. SAUSSY,
SAUSSY & SAUSSY,
Counsel for the Above Petitioner.
WM. GARRARD,
EDWARD S. ELLIOTT,
Counsel for the Above Respondent.

Case No. 8690, Court of Appeals of Georgia.
Filed in office May 1, 1918.

LOGAN BLECKLEY,
Clerk Court of Appeals of Georgia.

61 Court of Appeals of the State of Georgia.

CLERK'S OFFICE,
ATLANTA, May 1, 1918.

In obedience to the writ of certiorari hereto attached and returned herewith, I hereby certify that the foregoing contains a true copy of the stipulation of counsel in the case therein stated, as appears from the original now of file in this office.

Witness my signature and the seal of said court hereto affixed, the day and year above written.

[Seal Court of Appeals of the State of Georgia, 1906.]

LOGAN BLECKLEY,
Clerk Court of Appeals of Georgia.

62 [Endorsed:] 916/26,383. Case No. —. Court of Appeals of Georgia. — Term, 191–. —— —— versus —— ——. Transcript of Record. Filed in office —, 191–. —— ——, C. C. A. Ga.

63 [Endorsed:] File No. 26,383. Supreme Court U. S. October term, 1917. Term No. 916. Thomas J. Evans, as Receiver, etc., Petitioner, vs. National Bank of Savannah. Writ of certiorari and return. Filed May 4, 1918.

No. 916 [redacted]7

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

THOMAS J. EVANS, Sole Surviving Receiver of the Citizens & Screven County Bank,

vs.

NATIONAL BANK OF SAVANNAH.

Petition for Writ of Certiorari to the Court of Appeals, of the State of Georgia.

PETITION TO REVIEW JUDGMENT OF THE COURT OF APPEALS OF GEORGIA

BRIEF AND ARGUMENT

NOTICE TO OPPOSING COUNSEL

FREDERICK T. SAUSSY,
Counsel for Petitioner.

BRAID & HUTTON, INC., PRINTERS, STATIONERS, LITHOGRAPHERS, SAVANNAH, GA.

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

THOMAS J. EVANS, Sole Surviving Receiver of the Citizens & Screven County Bank, vs. NATIONAL BANK OF SAVANNAH.	Petition for Writ of Certiorari to the Court of Appeals, of the State of Georgia.

PETITION TO REVIEW JUDGMENT OF THE COURT OF APPEALS OF GEORGIA

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Thomas J. Evans, receiver of the Citizens & Screven County Bank respectfully shows,

That S. F. Cooper, since deceased, and your petitioner as receivers of the Citizens & Screven County Bank brought an action under Section 5197, 5198, R. S. of the United States in the Superior Court of Chatham County, Georgia,

to recover a penalty of twice the amount of interest paid by the Citizens & Screven County Bank to the National Bank of Savannah within the period allowed by law.

To the petition was appended as exhibit a description of the loans, the time the same were to run, the interest charged in advance and paid by the borrower to the lender, interest calculated at eight per cent. per annum on the amount actually loaned, and the excess over the highest contractual rate.

The highest contractual rate of interest per annum in Georgia is eight per cent., which can not be deducted in advance.

The rate of interest charged the borrower by the lender was (leaving out of view the enforced deposit hereinafter referred to), in many instances, in excess of eight per cent. per annum interest, calculated on the amount of the face of the loan contract, and in order to save repetition, petitioner has indicated a few of such instances as follows:

One of the notes was for $63,925.84 for 90 days. Interest on that sum for 90 days at eight per cent. is the sum of $1,278.51. The discount charged by the lender was $1,318.90, or $40.39 more than could be charged by the law of Georgia. Calculating eight per cent. for 90 days on the amount placed to the credit of the lender from the said loan, which was the amount of the loan, $63,925.84, less the discount charged, or $1,318.90, would be $1,252.11.

One of the notes was for $5,000.00 for 90 days, and the discount charged by lender and paid by borrower was $109.73. The interest on $5,000.00 for 90 days at eight per cent. is $100.00. As the lender passed to the credit of

the borrower the $5,000.00 less $109.73, or $4,890.27, the interest on that amount at eight per cent. for 90 days is $97.80.

Your petitioner, for brevity, respectfully refers to exhibit "A" of the original petition, incorporated in the record exhibited herewith.

The usury that was paid by the said borrower to the said lender consisted in the knowingly charging by the National Bank of Savannah of a discount on loans specified, a rate of interest which exceeded interest at the rate of eight per cent. per annum, in that the lender not only, in some of the instances pleaded, charged and deducted from the face of the loan a rate of discount exceeding eight per cent. per annum, for the time of such loans and in all other instances charged and deducted from the face of the loans eight per cent. per annum discount, but in addition thereto, and as a part of a scheme to exact usury and get in addition thereto more interest than is allowed by law, enforced a deposit of over $10,000.00 which was required to be made as a condition of the loans, and which could not be used for any other purpose except to pay off the said loans.

The interest rate allowed by the law of Georgia, by contract, whether by loan or discount is eight per cent. per annum. Any scheme whereby more than that amount is exacted as interest, is usurious.

Your petitioner shows that in the original petition the plaintiff sought to recover not only twice the amount of all interest actually paid, **but also twice seven per cent. computed by the petitioners on the enforced deposit,** alleging that the use of said money was worth the rate of seven per cent. per annum to the lender as well as the borrower. As this seven per cent. interest as such had not been paid, and as the penalty under the act of Congress is twice all interest

paid, petitioners amended the petition and struck from the amount sought to be recovered, **twice seven per cent. per annum computed on the enforced deposit,** leaving the petition, as amended, one in which it was alleged that the defendant bank had become liable for the penalty of twice the entire amount of all interest paid on all the loans enumerated. Petitioners at no time waived their rights to recover the full penalty as set forth in the petition as amended.

Your petitioner further shows, that the case was dismissed by the trial court on general demurrer, and a writ of error was sued out from the Court of Appeals of Georgia, and on December 11th, A. D., 1917, the latter Court affirmed the judgment of the lower Court.

Your petitioner shows that he and the said S. F. Cooper, as such receivers, then promptly filed a petition for a writ of certiorari within the time allowed by law in the Supreme Court of Georgia, and that Court, on the eighteenth day of January, A. D., 1918, denied the writ, refused to consider the said cause on the merits, and did not exercise jurisdiction to determine the said cause on the merits.

Thereafter, and on the 28th day of January, 1918, the said S. F. Cooper departed this life, and your petitioner is the sole surviving receiver of the said Citizens & Screven County Bank, and entitled to maintain this petition for the writ sought.

Your petitioner further shows, that the effect of the decision of the Court of Appeals of Georgia is that any National Bank in Georgia may lawfully charge any rate of interest it and its borrower may agree on regardless of the law, for said Court decided in this cause that deducting the discount from the face of the loan and in advance, at the rate of eight per cent. per annum is not controlled by the Georgia law on the subject, which prohibits any lender of

money in Georgia to charge eight per cent. per annum by way of discount or otherwise **in advance,** and that because National Banks derive a power of discount by Act of Congress, and by virtue of that Act may charge the highest rate in advance, that National Banks in Georgia can also in such loans, and also as a part of the transaction of discount, enforce a large deposit as a condition of the loan, and escape any penalty under the laws of Congress, UNLESS THE BORROWER PAYS INTEREST AS SUCH ON THE ENFORCED DEPOSIT, although the borrower does pay the entire discount charged.

Your petitioner shows that if this decision be permitted to stand unreversed, the equality intended by Congress between State Banks and National Banks would be destroyed as to the rate of interest that can be charged or received, and National Banks in Georgia and in other States where similar statutes are in force will be permitted to receive a higher rate of interest in such States than any other banks therein will be permitted lawfully to receive. The Act of Congress, 5197 R. S., expressly provides that National Banks may take, etc., on any loan or discount, interest at the rate allowed by the laws of the State where the bank is located, and no more. The Georgia Court of Appeals in this case held that taking eight per cent. in advance if done by a State Bank in Georgia is usurious, but not so, if done by a National Bank, because a National Bank can discount under the laws of Congress and may take the highest rate by discount in advance.

Your petitioner further shows that there is a contrary decision in Timberlake vs. First National Bank, 43 Federal 231, and that the statute as construed by the said Court and by the Court of Appeals of Georgia, has never been determined by this Court. The question is one of importance, and the Act of Congress should be finally construed, we

respectfully submit, by this Court in order that the conflict in the decisions of the lower courts may be settled and determined.

Your petitioner further shows that further error also clearly appears in the decision and judgment of the Georgia Court of Appeals in this case, in that the Court instead of treating the enforced deposit as a part of the plan and scheme in making the loans described, and as alleged in the petition, treated it as a separate and distinct undertaking and apart from the lending of money detailed, and having decided that deducting eight per cent. in advance from the face of the loan, was not usurious, because authorized by Congress, then determined that while the enforced deposit was perhaps usurious, yet, as counsel for the petitioner had stated in his brief that no interest was paid on this enforced deposit, that the same could not be recovered. Your petitioner shows that the brief of counsel explained why the seven per cent. doubled, calculated on the enforced deposit was stricken from the petition, because this seven per cent. was not paid, but your petitioner shows that the entire amounts, as shown in the original petition, as amended, that were deducted from each of the loans, by way of discount, were paid by the borrower, and the petition as amended shows that the borrower paid interest in some instances, some of which are expressly enumerated in this petition, in excess of eight per cent. per annum, even without consideration of the enforced deposit, and that the rate of interest had been calculated on the face of the loan and deducted therefrom, and that as a part of this scheme, the enforced deposit was also required.

Your petitioner further shows that there is no dispute of fact in this cause, arising as it does on demurrer, and that the said National Bank thereby admits as true all that is alleged in the petition as amended, and has thereby admitted that on a loan of $63,925.84, for ninety days, it

charged $1,318.90 discount, and also at the same time enforced a deposit as a condition of making the loan with intent to charge usury, the sum of $10,709.31. That on a note of $5,000.00 for ninety days, it charged $101.15 discount and at the same time enforced said deposit. That on a note of $5,000.00 for 90 days it charged $101.11 discount and also enforced the said deposit as aforesaid. That on a note of $5,000.00 for 90 days, a discount of $109.73 was charged, and the said deposit enforced as a part thereof, and in numerous other loans as set forth in the original petition, which clearly shows that the defendant had charged a discount of more than eight per cent per annum, by actually deducting from the face of the notes more than eight per cent. per annum calculated on the same from the time of the date until the maturity of the notes, and further admitted that all the interest thus charged had been paid to it. That your petitioner claims that under these undisputed facts, a clear case of charging usury, and a payment of the interest, is alleged and shown by the petition, and that the Court of Appeals of Georgia decided the case as if only eight per cent. per annum interest and no more was charged by way of discount; and said Court clearly ignored the fact that the deductions made by way of discount in many instances were at a greater rate than eight per cent. for the time the loans were to run, leaving to one side the question of whether the enforced deposit itself was a usurious device.

In the decision and judgment of the Court of Appeals of Georgia, herein complained of, a right, title, privilege or immunity claimed under R. S. 5197, 5198 by your petitioner was denied him, as the said cause of action was entirely based upon the said Statute of the United States and the decision and judgment of the said Court is based on a construction of the said Statute of the United States. And although the Statute of the United States limits National Banks to the rate of interest allowed by the laws of the

State where it is located and no more, the said Court of Appeals did not limit the said respondent to the rate allowed by the laws of Georgia, but has denied your petitioners right in spite of the fact that a higher rate than eight per cent. per annum was in many instances charged in advance, and with the enforced deposit, was charged on all of the loans specified in the petition and which interest was actually paid the respondent. And the said Court of Appeals further has decided and adjudged, in effect, that charging in advance and receiving eight per cent. per annum interest by a National Bank in Georgia is not receiving more than eight per cent. per annum interest. All of which your petitioner claims is error, and for these reasons the judgment should be reviewed and reversed.

Your petitioner files herewith as exhibit hereto a certified copy of the entire record of the Court of Appeals of Georgia. A certified copy of the judgment of the Supreme Court of Georgia denying a writ of certiorari, and a copy of the brief submitted the Court of Appeals of Georgia; and submits under this cover a brief in this cause, and prays that the writ of certiorari be granted, and the judgment of the Court of Appeals of Georgia be reviewed and reversed by this honorable Court.

Frederick Haas

Counsel for Petitioner.

To the National Bank of Savannah, the respondent and to its Counsel, Messrs. Garrard & Gazan and Edward S. Elliott:

T. J. Evans as receiver of the Citizens & Screven County Bank will, on Monday, the 25 day of March 1918, submit a petition to the Supreme Court of the United States at the Capitol, Washington, D. C., for a writ of certiorari to review the judgment, decision and proceedings of the Court of Appeals of Georgia in the above cause, a copy of the said petition and brief being herewith delivered to you.

Frederick Evans

Attorney for Petitioner.

The foregoing notice hereby accepted and delivery of a copy of the same with a copy of the petition for writ of certiorari and brief in support of the petition are hereby acknowledged.

Attorneys for National Bank of Savannah, Respondent.

Savannah, Ga.,_____1918.

BRIEF AND ARGUMENT

The facts of the case sufficiently appear in the accompanying petition. Suit was filed against the respondent to recover twice the amount of all interest paid by the Citizens & Screven County Bank within the time allowed by law, on the ground that in the loans set forth in the suit, interest in excess of eight per cent. per annum had been charged by the lender and paid by the borrower. The usury consisted in charging a greater rate of discount than eight per cent. per annum, in the loans mentioned in the petition. In some of the loans the rate of discount charged exceeded eight per cent. per annum. In others eight per cent. per annum was charged IN ADVANCE, and in all of them an enforced deposit of $10,709.31 was required as a condition of making the loans for the purpose of exacting usury.

Counsel for the respondent contends, and the Court of Appeals of Georgia decided, that although eight per cent. interest if charged in advance under the Georgia law, is usurious, as construed by the Georgia Courts, yet, as Congress had adopted under 5197, the RATE of interest allowed in Georgia, that a National Bank could reserve interest at that rate **in advance**, on loans or discounts and that such would not be usury. The Georgia Court ignored allegations of excessive discount charges, wherein the discount itself was greater than eight per cent. per annum in advance.

One of the questions involved is, what is meant by Sections 5197, 5198 R. S., of the United States, where the State law renders usurious a lending of money at a given rate of interest IN ADVANCE? and whether Congress meant that a National Bank could discount or lend at the highest rate in advance without incurring the penalty provided by Congress, although a State Bank could not lend at the same rate in advance without incurring the penalty provided by the State law.

If one wishes to lend money or discount and get eight per cent. interest, and the highest rate allowed by law is eight per cent. per annum, and the State law does not allow this interest at that rate to be deducted in advance, the lender can deduct interest at the rate of $74.08 per $1,000.00 in advance, and thereby get eight per cent. for the use of the money loaned. Our contention is that a National Bank in Georgia can not lawfully take out the interest at the highest rate allowed by law in advance, where the State law denounces such practice as usury, if indulged in by anyone in the State. And that Congress in giving a National Bank the power to loan or discount, did not give it power to take the highest interest rate IN ADVANCE, where in the State where it is located, any other person could not take the highest rate of interest in advance. We contend that Congress meant that a National Bank can take no more interest than a State Bank can take. If Congress meant that it could take the highest rate of interest **in advance,** then it meant that a National Bank could by extending the period of maturity of the loan for a sufficiently long enough time, charge any rate of interest in excess of that allowed by the laws of the State where it was located, despite the fact that a State Bank was denied this privilege.

We contend that the spirit of the law, not its letter, governs and that it has been distinctly ruled that where compounding interest more often than the State law allows is usury under that law, a National Bank can not compound interest AT THE RATE ALLOWED BY THAT LAW, more often than the law permits without incurring the penalty, although it was contended that as the bank had compounded AT THE RATE allowed by law, it could compound at that rate as often as it chooses. 195 U. S. 369.

The Court of Appeals of Georgia's decision may be reviewed by the Supreme Court of Georgia by certiorari, should the Supreme Court grant the writ. (Ga. Acts, 1916,

p. 19). Application was, therefore, made to the Supreme Court of Georgia which denied the writ. Petitioner has exhausted his remedy in the State Courts of Appeal, and has the right to apply for this writ to this Court to review the decision and judgment of the Court of Appeals of Georgia.

Norfolk & Suburban Turnpike Co. vs. Commonwealth of Virginia, 225 U. S., page 264.

And as petitioner has set up a right, title, privilege or immunity under a law of the United States, namely, 5197, 5198 R. S., and as the highest Court of the State in which the question can be determined has decided adversely to his right and has based its decision upon the construction of said statute of Congress, and as it has in the decision in effect held that the charges were usurious under the laws of Georgia, but not usurious under the laws of Congress, we have the right to file this petition for the writ of certiorari, under the Act of September, 1916, of Congress to review the ruling and decision of said Court of Appeals of Georgia.

Plain error appears on the face of the record, for the suit charged that the respondent bank had charged, inter alia, the following discounts on the following loans, each of the loans being for ninety days time: On a note for $63,925.84 for ninety days, discount charged, $1,318.90, eight per cent. discount on the said loan for that time is $1,278.51. Note of $5,000.00 for ninety days, discount charged, $109.73. The interest on $5,000.00 for ninety days at eight per cent. per annum is $100.00. Many other instances might be detailed. The petition and exhibits thereto show excessive charges over eight per cent. per annum interest.

In all other instances than those in which MORE THAN EIGHT PER CENT. was directly charged and deducted by way of discount, the petition alleged that the discount rate

charged was eight per cent. per annum, deducted in advance, and that in all of the loans the interest had been paid at the maturity of the loans. The Court of Appeals of Georgia ignoring the instances where more than eight per cent. interest had been deducted; treated the suit as if it alleged that the discount charged in all of the loans was at the rate of eight per cent. per annum in advance. And the Court of Appeals decides that this is legal under the Act of Congress.

The Courts of some States hold that taking interest at the highest rate authorized by law IN ADVANCE is not usurious. Some courts hold that it depends upon whether the loan ran for a short or long time. Georgia has held in Logansville Banking Co. vs. Forrester, 143 Ga. 302, that it is unlawful to charge interest at the highest contractual rate in advance in this State.

See 39 Cyc., page 948 d (11).

The case of Fleckner vs. Bank of the United States, 21 U. S. 338, 351, a note due after twenty three months was discounted, and the Supreme Court was dealing with the general question which has received a different construction in Georgia.

We contend that under Section 5197 R. S., the rate allowed by the laws of Georgia is adopted by Congress, and that if a National Bank lends money in Georgia it can not lawfully deduct the highest contractual rate allowed by that law in advance, for it would be lending money at more than eight per cent. interest. If the Act of Congress can be construed as contended for by counsel for respondent, and as decided by the Court of Appeals of Georgia in this case, then a National Bank in Georgia, by making the maturity of the loan sufficiently remote, can charge any rate of interest the borrower will agree to pay it. For example, if the loan is for a year, and the eight per cent. is deducted in

advance, the lender will receive more than eight per cent. for the use of the money. If the maturity is postponed for three years, then a much higher rate of interest would be obtainable, and if for a sufficiently long period of time, more than one half or even all of the loan would be deducted as interest and the borrower receive nothing. The Supreme Court of Georgia in McCall vs. Herring, 116 Ga., page 244, pointed out the absurd results that could be accomplished.

The State law is adopted by Congress, and what is usury under the law of the State where the National Bank is located, is usury if practiced by a National Bank in that State.

Timberlake vs. First National Bank, 43 Fed. Rep. 231.

Citizens National Bank vs. Donnell, 195 U. S. 374.

A National Bank is permitted to charge what the State law allows to its citizens and to the banks organized by it.

Daggs vs. Phoenix Bank, 177 U. S. 549, 555.

The effort was made in Citizens National Bank vs. Donnell, 195 U. S., p. 369, to construe 5197 R. S., to mean that the "rate" allowed by the State statute meant that if the interest was charged at that rate but was compounded more often than allowed by State law. But this Court held that if compounding the interest under the State law in violation of the State law was usury under that law, it was usury if done by a National Bank. And by a parity of reasoning we claim that if deducting interest in advance by the State law is usury under the State law, it is usury if done by a National Bank doing business in that State.

The decisions upon the subject are collated in
5 Fed. State Ann., page 132.

THERE IS NO OTHER QUESTION INVOLVED IN THIS CASE, THAN WHAT IS MEANT BY SECTIONS 5197, 5198 of the R. S. THERE IS NO QUESTION AS TO THE FORM OR MANNER IN WHICH THE CAUSE OF ACTION IS PLEADED. THERE IS NO QUESTION OF PRACTICE INVOLVED. THE SOLE QUESTION IS, THAT UNDER THE FACTS AS PLEADED BY THE PETITIONER, THE STATE COURT HAS CONSTRUED 5197, 5198 R. S. to mean that a National Bank can take more interest than is allowed by law, by charging a greater rate of discount than is allowed by that law. That a National Bank in Georgia may not only charge in excess of eight per cent. per annum interest, but that it can also charge eight per cent. per annum interest in advance, although the State law denies that right to any person in that State. That a National Bank in Georgia in addition to charging more than eight per cent. per annum, on some loans, and eight per cent. per annum in advance on other loans, can as a condition to all the loans enforce a deposit of a large sum, and that no penalty under the Acts of Congress results, unless interest as such is paid on the enforced deposit, despite the fact that interest has been paid on the full face of the loan contracts.

We respectfully submit that the Court of Appeals of Georgia has committed error in the three respects named, which should be corrected by this Court, for the dismissal of the suit means:

1. That a petition setting forth excessive charges of interest, which was paid the lending bank by the borrowing bank, did not authorize a recovery of the penalty denounced by Congress.

2. It has held that those loans which were made at eight per cent. in advance, while usurious under the Georgia statute, were not usurious because practiced by a National Bank.

3. It has held that enforcing a deposit of over $10,000.00 as a condition of the loans, as part of a scheme to knowingly charge usury, does not entitle the representative of the borrower to the penalty unless the borrower paid interest as such on the enforced deposit, although the borrower did pay the full amount of interest charged on the full face of the loan contract.

In all three respects, we submit, error hath been committed by the Court of Appeals of Georgia, and that the same should be corrected by this Court.

Frederick J. Law

Counsel for Petitioner.

EXHIBITS TO PETITION.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 916. 3[illegible]67

THOMAS J. EVANS, SOLE SURVIVING RECEIVER OF THE CITIZENS & SCREVEN COUNTY BANK, PETITIONER.

vs.

NATIONAL BANK OF SAVANNAH.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA.

FILED MARCH 11, 1918.

S. F. Cooper and T. J. Evans, as Receivers of Citizens & Screven County Bank,

v.

The National Bank of Savannah.

To the Honorable the Supreme Court of the State of Georgia:

Your petitioners, S. F. Cooper and T. J. Evans as Receivers of the Citizens & Screven County Bank, respectfully show:

1.

That your petitioners as such receivers filed a suit against the National Bank of Savannah in the Superior Court of Chatham County said State to recover in an action of debt the penalty of twice the amount of all interest paid by the said Citizens & Screven County Bank to the National Bank of Savannah, within the period of time named, the said suit being brought under Sections 5197 and 5198 of the Revised Statutes of the United States.

2.

The said action was dismissed on general demurrer, and the case carried to the Court of Appeals of Georgia by your petitioners, in which last named Court the said judgment was affirmed, Judge Luke dissenting, the said judgment of affirmance having been rendered on the 11th day of December A. D. 1917.

3.

Within ten days from the rendition of the said judgment of affirmance your petitioners filed notice with the Clerk of the Court of Appeals of Georgia of your petitioners' intention to file this petition for a writ of certiorari in this court.

4.

Your petitioners show that the said judgment of the said Court of Appeals of Georgia is erroneous for the following reasons:

A. The petition set forth a cause of action against the defendant and should not have been dismissed on general demurrer and the assignments of error contained in the bill of exceptions should have been sustained and the said judgment reversed.

B. Because the said petition distinctly set forth that the National Bank of Savannah knowingly charged and received usury from the said Citizens & Screven County Bank, and the latter bank had paid the said usury to the said National Bank of Savannah as set forth in the said suit, because eight per cent and in some instances more than

eight per cent had been charged the said borrowing bank by the said lending bank on loans made, by charging the said interest in advance and deducting the same from the full amount of the notes, and passing to the credit of the borrowing bank the difference, and also because as a part of the said loan transactions and involving all of them, and as a scheme or devise to exact usury, the said lending bank made it a condition of all of said loans that the borrowing bank should at all times keep on deposit with the lending bank the sum of $10,709.31 which could not be used for any purpose other than to repay the said loans, and which was knowingly done for the purpose and with the intent to collect and exact usury, namely interest at a higher rate than is allowed or authorized by the laws of Georgia. And your petitioners distinctly charged that the said interest charged by way of discount on the said loans were paid at maturity of each of the said loans, and for the reasons set forth in the said petition, the same constituted a payment of usury on all of the said loans, and the National Bank of Savannah had become liable to a forfeiture for all of the interest paid on the said loans.

C. The said Court of Appeals erred in giving separate consideration to the exaction of eight per cent, interest in advance by way of discount, as a distinct proposition, and then giving consideration separately to the allegations of the petition as amended to the effect that the enforced deposit of $10,709.31 as a distinct proposition from the lending of the monies and charging the highest rates and in some cases exceeding the highest rates of interest allowed by law, namely eight per cent, which was charged in advance, and which interest was all alleged in the plaintiff's petition to have been paid. The allegations of the plaintiff's petition showing distinctly that the said loans and the rates charged, which were paid, and the enforced deposit during the time the said loan ran, were all parts of one plan and device to charge obtain and receive more than eight per cent in advance for the use of money.

D. The Court of Appeals further committed plain error in its construction of the language of the plaintiff's counsel's brief which explained why an amendment to the original petition had been filed. The original petition not only sought to recover twice all of the interest paid, but also twice the amount of seven per cent on the $10,709.31 enforced deposit. The amendment struck the claim for twice the seven per cent on this enforced deposit, because while this seven per cent was lost to the borrowing bank, the borrowing bank did not pay the seven per cent on the enforced deposit, and was limited by the Act of Congress in suing for twice the total amount of all interest actually paid. The explanation of the amendment in the brief showed that as no 7 per cent on the said deposit was paid, the amendment was proper. But the said petition as amended still left the plain allegation that the payment of the eight per cent in advance, and also the enforced deposit during the time the said loans ran, was a device whereby more than eight per cent in advance was received charged and paid, for the reason that the actual payment of the discount at the rate of eight per cent in advance, plus the use of the said enforced deposit constituted a payment of more than eight

per cent for the use of said money, and the petitioners as receivers of said borrower were entitled to recover twice the amount of all interest paid, because usury in the said loan existed and had been paid to the lending bank. The said Court of Appeals erroneously finding that there was no usury by virtue of this device and arrangement of the enforced deposit, because no interest was paid on it, namely the seven per cent that was calculated on the same in the original petition. Your petitioners show that under no circumstances was any payment of interest on this $10,709.31, as shown by the petition expected to be paid by the borrower to the lender, but the said petition always prior and since the amendment shows that the eight per cent in advance on the full amount of the loans was paid, that such payment under the device did constitute usury, and that such usury had been paid. The said petition as amended distinctly showing that the lending bank while charging interest on the full amount of the loans by charging eight per cent in advance on each loan and in some instances more than eight per cent in advance, also by virtue of the enforced deposit did get a higher rate of interest than that allowed by law and in excess of eight per cent in advance, because the use of ten thousand seven hundred and nine dollars and thirty one cents, of the borrower's money was and had to be left with the said lender during all of the times said loan ran, and as a part of the said loan arrangement which was alleged to have been a device to exact more than eight per cent interest on the said amounts so loaned.

E. Because under the laws of Congress, a National Bank doing business in and having its offices in the State of Georgia and being a Citizen of Georgia, cannot lawfully charge by way of discount eight per cent, in advance on loans made by it, and such practice constitutes a charging of usury, and the payment of such discount constitutes the payment of interest in excess of that allowed by the laws of the State of Georgia, and in excess of the rate allowed by the laws of Congress relating to National Banks doing business and having their offices in the State of Georgia. The said laws of Congress, section 5197 of the Revised Statutes having adopted the interest laws of the State wherein the National Banking Association is located, and the laws of Georgia as construed by this Court and the Court of Appeals of Georgia having held that no person or corporation can lawfully charge eight per cent, interest per annum in advance on any loans or discounts. A National Bank in Georgia cannot lawfully charge eight per cent, per annum in advance on loans or discounts.

F. Because the petition of the plaintiffs against the defendant bank shows from facts well pleaded that the National Bank of Savannah charged and received more than eight per cent, in advance on loans mentioned and described in the petition because of the device of the enforced deposit of the $10,709.31 during all the time the said loans ran, the borrowing bank paying all of the interest charged on the amount of the loans, and being out of the use of the $10,709.31 during all of such time, and the lending bank having the use of the same all of said time without paying anything for the use of the same, and thereby getting, receiving and obtaining interest

on the full face of the loans at the highest contractual rate, to-wit eight per cent. per annum, which was deducted from the face of the loan in advance, and which interest was paid at the maturity of each loan, and also getting the use of the enforced deposit of the $10,709.31 during said time. All of which is set forth and shown by the original petition as amended.

And your petitioners further show, that the reasons why this application for certiorari should be granted, are that the said judgment of the Court of Appeals is erroneous for the reasons herein before set forth, and also because:

1. The question involves the construction of the laws of Congress of the United States, and the plaintiffs have specially set up and claimed a right under the said law of Congress, Sec. 5197 and 5198 of the R. S. of the United States, and petitioners are required to apply for this writ of certiorari, before they can avail themselves of the right to sue out a writ of error from the United States Supreme Court. The question involved has been construed and decided favorably to your petitioners in the case of Timberlake v. First National Bank, 43 Fed. Rep., 231, in reference to taking the highest rate of interest in advance, irrespective of the enforced deposit. The Georgia Appeals decision in the instant case being the only authority deciding the question raised by the defendant bank.

2. Because the purpose and intent of Congress in adopting the State law as to the rate of interest which could be charged, and Congress having declared in Section 5198 that the taking, reserving or charging a rate of interest greater than is allowed by Section 5197 R. S. of the United States, where the greater rate has been paid, gives a right of action to the person paying the same or his legal representative, for double the amount of all interest paid; the taking of eight per cent. in advance in Georgia by a National Bank, coupled with an arrangement of an enforced deposit by the borrower during the time of the loan of $10,709.31, and the borrower pays the discount, constitutes the payment of interest at a greater rate than is allowed by Section 5197 of the R. S. of the United States, and constitutes the taking and receiving of usury.

3. Because the question is of importance generally, as under the decisions of this Supreme Court, the State Banks cannot lawfully charge a discount of eight per cent. in advance, while under the decision of the Court of Appeals of Georgia a National Bank in this State may charge a discount of eight per cent. in advance, and can likewise enforce a large deposit from the borrower as a condition to making the loan, and the borrower having paid the discount, would under the ruling of the Georgia Court of Appeals in this case have no action against the lender, because the borrower had not paid any interest on the enforced deposit, when he was never expected to pay any interest on the enforced deposit, but was expected to pay and did pay the discount at the highest rate in advance on the full face of the loan, and made the enforced deposit for the purpose of enabling the lender to charge and receive more than eight per cent. in advance. An advantage to National Banks over the State Banks of

Georgia which was not intended by Congress, because Congress in its legislation intended to place National Banks on an equality with State Banks in reference to the rate of interest that could be charged and received by National Banks doing business in Georgia.

4. Because under the construction placed upon the plaintiff's petition the State Court of Appeals has in effect decided that National Banks in Georgia can charge a discount of the highest rate in advance, and enforce a deposit for the purpose of exacting usury, during the time the loan is to run, and that such practice does not constitute usury when such a practice or device if practiced by a State Bank in Georgia would constitute usury, the borrower paying the amount of the discount, and also being out of the use of the enforced deposit, the lender having the use of it.

Wherefore your petitioners bring this petition for a writ of certiorari within thirty days from the rendition of the judgment of the Georgia Court of Appeals in this case, and prays that the writ be granted, the record ordered transferred to this court, and the said judgment be reviewed and reversed in accordance with the law.

And your petitioners attach as an exhibit hereto, a certified copy of the record of the Court of Appeals of Georgia, and a copy of the opinion of said Court in this Cause.

And your petitioner will ever pray.

SAUSSY & SAUSSY,

Attorneys for S. F. Cooper & T. J. Evans, Receivers of Citizens & Screven County Bank, Petitioners for Certiorari.

P. O. Address, Savannah, Georgia.

Service of the foregoing petition acknowledged, copy of same received. Brief of counsel for movants received. Also further service and notice waived.

GARRARD & GAZAN,
E. S. ELLIOTT,
Counsel for National Bank of Savannah.

December 22, 1917.

a

(Endorsed:) Case No. 738. October 1917. Supreme Court of Georgia. Cooper et al., receivers, versus National Bank of Savannah. Petition for certiorari to Court of Appeals. Filed in office December 26, 1917. Z. D. Harrison, Clerk Supreme Court of Georgia.

Supreme Court of Georgia.

ATLANTA, January 18, 1918.

The Honorable Supreme Court met pursuant to adjournment. The following order was passed: S. F. Cooper et al., receivers, v. National Bank of Savannah.

Upon consideration of the application for certiorari filed to review

the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied.

[Seal of Supreme Court of the State of Georgia, 1845.]

Supreme Court of the State of Georgia.

Clerk's Office, Atlanta, March 9, 1918.

I, W. E. Talley Deputy Clerk of the Supreme Court of the State of Georgia, do hereby certify that the foregoing pages hereto attached contain a true copy of the petition for certiorari to the Court of Appeals of Georgia, and order of the Supreme Court denying the same, in the case of S. F. Cooper et al., receivers, v. National Bank of Savannah, as appears from the records and files of this office.

Witness my signature and the seal of said Court hereto affixed the day and year first above written.

[Seal of Supreme Court of the State of Georgia, 1845.]

W. E. TALLEY,
Deputy Clerk.

[Endorsed:] 916 26,383.

In the Georgia Court of Appeals, March Term, 1917.

Receivers of the Citizens & Screven County Bank, Plaintiffs in Error,

v.

National Bank of Savannah, Defendant in Error.

Brief and Argument of Saussy & Saussy, Counsel for Plaintiffs in Error.

Statement of the Case.

The action is brought under Section 5198 of the Revised Statutes of the United States, the petition charging the defendant with knowingly taking, receiving, reserving and charging a rate of interest greater than is allowed by the laws of Georgia, and that the Citizens & Screven County Bank paid the usury to the defendant, and the defendant received the said usury, the petition setting forth the amounts of each loan, the time it ran, the amount of discount charged, and paid by the Citizens & Screven County Bank to the defendant, and the time when the usury was paid.

Usury exists, as shown by the petition, in that in some cases the discount was at more than eight per cent per annum interest in advance, and in all other instances, at the highest contractual rate in advance,

and also, in that during the entire period of said lendings and borrowings, the sum of ten thousand seven hundred nine and 31/100 ($10,709.31) dollars, was required to be kept on deposit by the borrower with the lender, which could only be used towards the payment of said indebtedness, which was knowingly done for the purpose of exacting usury.

The lower court dismissed the petition on demurrer, and the plaintiffs sued out their writ of error to correct this judgment.

The Law of the Case.

Section 5197 of the Revised Statutes fixes the rate of interest that National Banks may take, receive, reserve and charge, and as there is a Statute in Georgia fixing the rate of interest, the first paragraph of that Section applies to the case at bar. That paragraph reads as follows:

5197. Any association may take, receive, reserve and charge on any loan or discount made, or upon any note, bill of exchange or other evidence of debt, interest at the rate allowed by the laws of the State, Territory or district where the bank is located, *and no more* (italics ours).

Section 5198 provides a penalty for taking, receiving, reserving or charging a rate of interest greater than is allowed by the preceding Section (Sec. 5197), and in case the greater rate has been paid, the person by whom it has been paid, or his legal representatives may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same.

The case might be rested on the words of the Statute alone, for they are indeed plain enough. But as the learned court below, we claim, fell into error, we will undertake to explain wherein the error lies.

It was contended at the bar in the lower court by the learned counsel for the defendant, that a National Bank doing business in Georgia, was entitled to charge a rate of discount at the highest legal or contractual rate of interest allowed by Georgia, in advance, and that such institution was not at all limited in that right by any statute of Georgia or of the United States, for that the power to discount bills and notes by a National Bank was a federal power given them by Section 5136 R. S. sub. sec. 7.

And it is quite true that cases may be found in other states, where short term loans may be discounted at the highest interest rates allowed by law, and the discount taken out in advance, and that in such states National Banks have not been liable for the penalty.

But we submit there is no authority anywhere, that authorizes a National Bank to reserve and charge interest by way of discount in advance at the highest rate allowed by the law of the State where it is located, and that such practice does not amount to usury, where such a practice by a State bank in that State would under the State law be held usurious.

On the contrary, there is direct authority for the proposition, that if taking interest in advance at highest rates allowed by law, is usury in a State, then a National Bank in that State is liable for the penalty of usury if it discounts commercial paper in advance at the highest interest rate allowed by such laws.

Timberlake v. First National Bank, 43 Federal Reporter, 231 (3).

The words of Section 5197, says that National Banking Associations shall charge and receive no more on any loan or discount than the interest allowed by the laws of the State, Territory or district where the bank is located.

Under the laws of Georgia, a State bank cannot take or receive or reserve interest at the highest legal rate in advance by discount for either short or long time loans, and such a practice is usury.

Loganville Banking Co. v. Forrester, 143 Ga., 302.

The Court will kindly remember that taking out interest in advance at the highest legal rate and higher than the legal rate, was not by any means the "only offence" charged against the defendant in the petition. The petition charged that the defendant exacted usury in all of said loans, because in addition to charging and receiving usury on the loan by reserving interest in advance by way of discount at rates higher than those allowed by the law of Georgia, which was paid the defendant, it required the borrower to keep on deposit at all times, the sum of at least ten thousand seven hundred nine and 31 100 ($10,709.31) dollars, which could not be used by the borrower except and only except for the purpose of repaying the loan, and was so required for the purpose of exacting usury. This in itself was a clear violation of our usury laws, for any device whatsoever that is used to charge and receive more than the rate allowed by law, is condemned by our Statute, see 114 Ga. 965, 956.

To make this clear. The borrower goes to a bank to borrow fifty thousand ($50,000.00) dollars, the Banker says I will discount your note for sixty thousand dollars ($60,000), charging you eight per cent interest in advance, for the period the loan is to run, and I will pass to your credit less this discount fifty thousand ($50,000.00) dollars, and will keep on deposit ten thousand ($10,000.00) dollars, that shall be used for no other purpose than to pay this debt.

If that is not a usurious transaction, when done with the intent to take and charge usury, then there need be no usury laws whatever.

In East River Bank v. Hoyt, et als., 32 N. Y. Reports 118 the Court there said:

"If it be stipulated, on the discount of a note, that a portion of the proceeds shall remain on deposit, without the right to use the same, except in payment of the note, at maturity, the transaction is usurious."

The Court said: "it was a suggestion, without any decent disguise, to lend the defendants the money, if they would pay a usurious premium."

One of the judges said: "it is an act of cupidity and extortion, that

is not provided with even the decencies of a cloak to cover its nudity."

The usurious interest must be paid, before twice the amount of the entire interest can be recovered.

The petition alleges when the interest was actually paid.

There is no question of the Statute of limitations, for the entire transactions occurred within the two years immediately proceeding the filing of the suit.

The borrower is not required to pay the debt in full before maintaining his action. This was explained by Mr. Justice Lamar in the case of McCarthy v. First National Bank of Rapid City, 223 U. S. p. 499. The Court will notice that Justice Lamar says that there is no locus penitentiæ, after payment of usury is made. He meant by that, to indicate that those decisions of other courts that had ruled that there was a locus penitentiæ down to the time when the debt had been paid in full, was not the law. Those decisions had held that action could not be brought to recover the penalty until the debt had been paid in full, for they reasoned, the lender might repent of the usury charged and received, and purge the loan of the usury on final payment, and escape the penalty.

But, Justice Lamar made it clear that the borrower can maintain his suit within two years from the date when he pays the usury. Of course he must pay the usury to be entitled to recover the penalty, for if he is merely charged usury, but never pays it, he is not entitled to the penalty of twice the amount of the interest.

The penalty is not twice the amount of the usury, i. e., the excess taken over legal interest. It is twice the entire amount of all of the interest charged and paid.

Talbot v. Sioux City First National Bank, 185 U. S., 172.

Under these authorities, and the plain words of the Statute, we respectfully ask that the judgment be reversed and the cause be remanded for the case to proceed to trial.

A reduction of the debt is a payment of usury involved in the loan, because partial payments are applied in reduction of principal.

102 Fed. Rep., 442.

The penalty imposed by Congress is the exclusive penalty, in other words, the penalty imposed by the State Statute does not apply, but the rate allowed by the State Statute does apply, and the construction by the State Court of its law, is conclusive on the question.

155 Atl., 502.

Citizens National Bank v. Donnell, 195 U. S., 374.

A receiver is a "legal representative."

15 Wall., 409.

It needs no explanation, but its dissection is naturally involved on the ruling excepted to.

The original petition sets forth the loans, the rate of interest and the time when the loans matured. It was not clearly set forth when

the usury was paid. The amendment set forth that the usury was paid at the maturity of each of the respective loans.

The original petition sought to recover the amount of interest charged to the defendant in the petition on the deposit of ten thousand seven hundred nine and 31/100 dollars ($10,709.31). This was amended and stricken, because the interest on that amount while lost to the plaintiff was not paid to the defendant. In other words, the plaintiff cannot recover under the Statute for interest lost, but for usury paid, and while the requirement of the deposit, on the conditions named, was really in itself a usurious transaction, the plaintiff could not recover the penalty computed on that amount.

The petition charged that the usury was knowingly charged and received. That in itself means "intentionally."

135 Ga., 693.
223 U. S., 493.

A national bank may charge any rate of interest allowed by the State law.

Union Nat. Bank v. Louisville, etc., Ry. Co., 145 Ill., 208.
Wolverton v. Exchange Nat. Bank, 11 Wash., 94.
California Nat. Bank v. Ginty, 108 Cal., 148.

"Fixed by the laws." This means "allowed by the laws," and not necessarily a rate expressed in the laws. The National law adopts the State law, and permits to national banks what the State law allows to its citizens and to the banks organized by it.

Daggs vs. Phoenix Bank, 177 U. S., 549, 555.
53 Pac. 201 (Arizona).

Usury suits do not often appeal to us. This case is an exception. The Citizens & Screven County Bank is defunct, its receivers need funds for administration, the defendant has violated the law, and under the charges made is liable for the penalty, if a jury believes the evidence of the plaintiffs. That we are entitled to have a jury pass upon the question, is the claim of the plaintiffs in error, who have prosecuted this writ of error to reverse a judgment that does not seem to have a single authority to support it.

Respectfully submitted,

SAUSSY & SAUSSY,
Counsel for Plaintiffs in Error.

[Endorsed:] 8690. J. 201. In the Georgia Court of Appeals. March Term, 1917. Brief for plaintiff in error. Receivers of the Citizens & Screven County Bank, Plaintiffs in error, vs. National Bank of Savannah, Defendants in error. Brief and Argument of Counsel for Plaintiffs in error. Service acknowledged. Copy received June 20th, 1917. E. S. Elliott, Garrard & Gazan, Att'ys for National Bank of Savannah. Jun- 21, '17. Saussy & Saussy, Attorneys and Counsellors at Law, Office and P. O. Address, Savannah, Georgia.

Court of Appeals of the State of Georgia.

CLERK'S OFFICE, ATLANTA, February 26, 1918.

I hereby certify that the foregoing pages hereto attached constitute one of the copies of the brief for the plaintiff in error upon which the case therein stated was submitted to the Court of Appeals.

Witness my signature and the seal of said court hereto affixed, the day and year above written.

[Seal of Court of Appeals of the State of Georgia, 1906.]

LOGAN BLECKLEY,
Clerk Court of Appeals of Georgia.

[Endorsed:] 916/26,383.